

(4) Exhibits, when offered by any party, shall be received in evidence by the hearing officer. The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

(f) *Hearing in the absence of a party.* A hearing may proceed in the absence of any party which, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The hearing officer shall require the parties who are present to submit such evidence as the hearing officer may require for the making of an award.

(g) *Evidence.* (1) The parties may offer such evidence as they desire and shall produce such additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute. The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the hearing officers and of all the parties, except where any of the parties is absent in default, has waived the right to be present, or has been excluded by the hearing officer to protect confidential business information.

(2) All documents not filed with the hearing officer at the hearing, but arranged for by agreement of the parties, shall be filed with the American Arbitration Association for transmission to the hearing officer, according to the agreed-upon schedule. All parties shall be afforded opportunity to examine such documents.

(h) *Evidence by affidavit and filing of documents.* The hearing officer shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the hearing officer deems it entitled to after consideration of any objections made to its admission.

(i) *Closing of hearings.* The hearing officer shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the hearing officer shall declare the hearings closed and record the time of closing of the hearing. If briefs are to be filed, the hearings shall be declared

closed as of the final date set by the hearing officer for the receipt of briefs. If documents are to be filed as provided for in paragraph (g)(2) of this section and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings.

(j) *Reopening of hearings.* The hearings may be reopened on the hearing officer's own motion, or upon application of a party at any time before the award is made. If the reopening of the hearings would prevent the making of the award within the specified time the matter may not be reopened, unless the parties agree upon the extension of the time limit.

(k) *Waiver of oral hearings.* The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the American Arbitration Association shall specify a fair and equitable procedure.

(l) *Waiver of rules.* Any party who proceeds with the hearing after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

(m) *Extensions of time.* The parties may modify any period of time by mutual agreement. The American Arbitration Association for good cause may extend any period of time established by these rules, except the time for making the award. (§ 791.37(a)) The American Arbitration Association shall notify the parties of any such extension of time and its reason therefor.

(n) *Communication with hearing officer.* There shall be no direct communication between the parties and a hearing officer other than at oral hearings. Any other oral or written communications from the parties to the hearing officer shall be directed to the American Arbitration Association for transmittal to the hearing officer.

#### § 791.31 Expedited procedures.

Unless the American Arbitration Association in its discretion determines otherwise, the Expedited Procedures described in this section shall be applied in any case where the total claim

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of any party does not exceed \$5,000, exclusive of interest and hearing costs, and may be applied in other cases if the parties agree.

(a) *Application of rules.* The expedited hearings will be conducted according to the same procedures as the regular ones, except for those specifically changed by the expedited rules in this section, § 791.31.

(b) *Notice by telephone.* The parties shall accept all notices from the American Arbitration Association by telephone. Such notices by the American Arbitration Association shall subsequently be confirmed in writing to the parties. Notwithstanding the failure to confirm in writing any notice or objection hereunder, the proceeding shall nonetheless be valid if notice or obligation has, in fact, been given by telephone.

(c) *Appointment and qualifications of hearing officers.* The American Arbitration Association shall submit simultaneously to each party to the dispute an identical list of five persons from which one hearing officer shall be appointed. Each party shall have the right to strike two names from the list on a peremptory basis. The list is returnable to the American Arbitration Association within 10 days from the date of mailing. If for any reasons the appointment cannot be made from the list, the American Arbitration Association shall have the authority to make the appointment without the submission of additional lists. Such appointment shall be subject to disqualification for the reasons specified in § 791.29(f). The parties shall be given notice by telephone by the American Arbitration Association of the appointment of the hearing officer. The parties shall notify the American Arbitration Association, by telephone, within 7 days of any objections to the hearing officer(s) appointed. Any objection by a party to such hearing officer shall be confirmed in writing to the American Arbitration Association with a copy to the other parties.

(d) *Time and place of hearing.* The hearing officer shall fix the date, time and place of the hearing. The American Arbitration Association will notify the parties by telephone, 7 days in advance of the hearing date. Formal notice of

hearing will be sent by the American Arbitration Association to the parties.

(e) *The hearing.* Generally, the hearing shall be completed within 1 day. The hearing officer, for good cause shown, may schedule an additional hearing to be held within 5 days.

(f) *Time of award.* Unless otherwise agreed to by the parties, the Award shall be rendered not later than 15 business days from the date of the closing of the hearing.

### § 791.34 Serving of notice.

(a) Each party shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of a hearing under these rules and for any appeal to EPA or any court action in connection therewith may be served upon such party by mail addressed to such party or its attorney at its last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

(b) The American Arbitration Association shall, upon the written request of a party, furnish to such party, at its expense, certified facsimiles of any papers in the American Arbitration Association's possession that may be required in appeal to EPA or judicial proceedings relating to the hearing.

### § 791.37 The award.

(a) *Time of award.* The award shall be made promptly by the hearing officer and, unless otherwise agreed by the parties, no later than 30 days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the hearing officer.

(b) *Form of award.* The award shall be in writing and shall be signed either by the sole hearing officer or by at least a majority if there is more than one. It shall contain a concise statement of its basis and rationale, and a timetable for payment of any ordered reimbursement.

(c) *Delivery of award to parties.* Parties shall accept as legal delivery of